



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 2) नई दिल्ली, मंगलवार, फरवरी 14, 1995/माघ 25, 1916
No. 2] NEW DELHI, TUESDAY, FEBRUARY 14, 1995/MAGHA 25, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 14th February, 1995:—

BILL NO. II OF 1995

A Bill further to amend the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER 1

PRELIMINARY

1. (1) This Act may be called the Banking Companies (Acquisition and Transfer of Undertakings) Amendment Act, 1995.

Short
title and
com-
mence-
ment.

(2) It shall be deemed to have come into force on the 21st day of January, 1995.

CHAPTER II

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1970

Amend-
ment of
section
3.

2. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, after sub-section (2B), the following sub-sections shall be inserted, namely:—

5 of 1970.

“(2BB) Notwithstanding anything contained in sub-section (2), the paid-up capital of a corresponding new bank constituted under sub-section (1) may, from time to time and before any paid-up capital is raised by public issue under clause (c) of sub-section (2B), be reduced by—

(a) the Central Government, after consultation with the Reserve Bank, by cancelling any paid-up capital which is lost, or is unrepresented by available assets;

(b) the Board of Directors, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by paying off any paid-up capital which is in excess of the wants of the corresponding new bank:

Provided that in a case where such capital is lost, or is unrepresented by available assets because of amalgamation of another corresponding new bank or a corresponding new bank as defined in clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 with the corresponding new bank, such reduction may be done, either prospectively or retrospectively, but not from a date earlier than the date of such amalgamation.

40 of 1980.

(2BBA) (a) A corresponding new bank may, from time to time and after any paid-up capital has been raised by public issue under clause (c) of sub-section (2B), by resolution passed at an annual general meeting of the shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by the shareholders so entitled and voting, reduce its paid-up capital in any way.

(b) Without prejudice to the generality of the foregoing power, the paid-up capital may be reduced by—

(i) extinguishing or reducing the liability on any of its shares in respect of share capital not paid-up;

(ii) either with or without extinguishing or reducing liability on any of its paid-up shares, cancelling any paid-up capital which is lost, or is unrepresented by available assets; or

(iii) either with or without extinguishing or reducing liability on any of its paid-up shares, paying off any paid-up share capital which is in excess of the wants of the corresponding new bank.

(2BBB) Notwithstanding anything contained in sub-section (2BB) or sub-section (2BBA), the paid-up capital of a corresponding new bank shall not be reduced at any time so as to render it below twenty-five per cent. of the paid-up capital of that bank as on the date of commencement of the Banking Companies (Acquisition and Transfer of Undertakings) Amendment Act, 1995.”.

CHAPTER III

AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

40 of 1980.

3. In section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, after sub-section (2B), the following sub-sections shall be inserted, namely:—

Amend-
ment of
section 3.

“(2BB) Notwithstanding anything contained in sub-section (2), the paid-up capital of a corresponding new bank constituted under sub-section (1) may, from time to time and before any paid-up capital is raised by public issue under clause (c) of sub-section (2B), be reduced by—

(a) the Central Government, after consultation with the Reserve Bank, by cancelling any paid-up capital which is lost, or is unrepresented by available assets;

(b) the Board of Directors, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by paying off any paid-up capital which is in excess of the wants of the corresponding new bank:

Provided that in a case where such capital is lost, or is unrepresented by available assets because of amalgamation of another corresponding new bank or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with the corresponding new bank, such reduction may be done, either prospectively or retrospectively, but not from a date earlier than the date of such amalgamation.

5 of 1976.

(2BBA) (a) A corresponding new bank may, from time to time and after any paid-up capital has been raised by public issue under clause (c) of sub-section (2B), by resolution passed at an annual general meeting of the shareholders entitled to vote, voting in person, or, where proxies are allowed, by proxy, and the votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by the shareholders so entitled and voting, reduce its paid-up capital in any way.

(b) Without prejudice to the generality of the foregoing power the paid-up capital may be reduced by—

(i) extinguishing or reducing the liability on any of its shares in respect of share capital not paid-up;

(ii) either with or without extinguishing or reducing liability on any of its paid-up shares, cancelling any paid-up capital which is lost, or is unrepresented by available assets; or

(iii) either with or without extinguishing or reducing liability on any of its paid-up shares, paying off any paid-up share capital which is in excess of the wants of the corresponding new bank.

(2BBB) Notwithstanding anything contained in sub-section (2BB) or sub-section (2BBA), the paid-up capital of a corresponding new bank shall not be reduced at any time so as to render it below twenty-five per cent. of the paid-up capital of that bank as on the date of commencement of the Banking Companies (Acquisition and Transfer of Undertakings) Amendment Act, 1995.”

CHAPTER IV

REPEAL AND SAVING

Repeal
and
Saving.

4. (1) The Banking Companies (Acquisition and Transfer of Undertakings) Amendment Ordinance, 1995 is hereby repealed.

Ord. 4 of
1995.

(2) Notwithstanding such repeal, anything done or any action taken under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

5 of 1970.
40 of 1980.

STATEMENT OF OBJECTS AND REASONS

The Reserve Bank of India had introduced certain prudential accounting norms in respect of income recognition, asset classification and provisioning of banks based on record of recovery. Besides, the Reserve Bank of India had also introduced certain norms for capital adequacy based on the system risk weighted assets in terms of which commercial banks have to achieve unimpaired capital to the extent of 8 per cent of their risk weighted assets by the 31st March, 1996. The prescription of capital adequacy norms necessitated the Central Government as owners to provide capital to the nationalised banks. Government of India contributed a sum of Rs. 5,700 crores during 1993-94 and Rs. 3,889.21 crores during 1994-95 so far.

2. Banks in the private sector are governed by the Companies Act, 1956 in relation to their incorporation and have to function within the ambit of the regulatory enactments such as the Banking Regulation Act, 1949, etc. in accordance with the Companies Act, 1950 after following a prescribed procedure, the capital structure of a company can be varied through addition of capital, reduction of capital and conversion of debt to equity. No specific provision is at present available in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 for reduction of the paid-up capital of the corresponding new banks. The erstwhile New Bank of India which had been amalgamated with Punjab National Bank with effect from the 4th September, 1993 had accumulated losses. Punjab National Bank has not been able to finalise its balance sheet for the year ending March, 1994 on account of the losses of erstwhile New Bank of India.

3. In order to enable the corresponding new banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 to structure their balance sheet, certain amendments in the said Acts were considered necessary to provide for—

(i) reducing or cancelling the paid-up share capital to the extent it is lost on account of losses or is unrepresented by available assets;

(ii) paying off by a bank to the Central Government any amount of share capital which is in excess of its wants;

(iii) reducing or cancelling paid-up share capital by banks which have assessed the capital market, by a resolution passed at the Annual General Meeting by the share holders and;

(iv) a provision to the effect that paid-up capital of a corresponding new bank shall not be reduced at any time so as to render it

below 25 per cent of its paid-up capital on the date of commencement of the Banking Companies (Acquisition and Transfer of Undertakings) Amendment Ordinance, 1995.

4. As Parliament was not in session and the above-mentioned amendments were required to be carried out immediately, the President promulgated the Banking Companies (Acquisition and Transfer of Undertakings) Amendment Ordinance, 1995 (Ord. 4 of 1995) on the 21st January, 1996.

5. The Bill seeks to replace the aforesaid Ordinance.

M. V. CHANDRASHEKARA MURTHY.

II

BILL No. III OF 1995

*A Bill to amend the Securities and Exchange Board of India Act, 1992
further to amend the Securities Contracts (Regulation) Act, 1956.*

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Securities Laws (Amendment) Act, 1995.

(2) It shall be deemed to have come into force on the 25th day of January, 1995.

Short
title
and
com-
mence-
ment.

CHAPTER II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992

15 of 1992.

2. In section 2 of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act), for sub-section (2), the following sub-section shall be substituted, namely:—

Amend-
ment of
section
2.

42 of 1956.

“(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 shall have the meanings respectively assigned to them in that Act.”.

Amend-
ment of
section
6.

3. In section 6 of the principal Act, the brackets and figure "(1)" and clause (d) shall be omitted.

Insertion of
new
section
7A.

4. After section 7 of the principal Act, the following section shall be inserted, namely:—

Member
not to
partici-
pate in
meetings
in
certain
cases.

"7A. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter."

Amend-
ment of
section
11.

5. In section 11 of the principal Act,—

(a) in sub-section (2),—

(i) after clause (b), the following clause shall be inserted, namely:—

"(ba) registering and regulating the working of the depositories, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;"

(ii) in clause (c), for the words "collective investment schemes", the words "venture capital funds and collective investment schemes" shall be substituted;

(iii) in clause (d), for the words "stock exchanges and", the words "stock exchanges, mutual funds, other persons associated with the securities market" shall be substituted;

(iv) in clause (j), the words, brackets and figures "the Capital Issues (Control) Act, 1947 and" shall be omitted;

29 of 1947.

(v) after clause (l), the following clause shall be inserted, namely:—

"(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;"

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) of sub-section (2), the Board shall have the same powers as are vested in a civil court under the Code of Civil

5 of 1908.

Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place.”

6. After section 11 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 11A and 11B.

1 of 1956.

“11A. Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors, specify, by regulations,—

(a) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and

(b) the manner in which such matters,

shall be disclosed by the companies.

Matters to be disclosed by the companies.

11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary—

Power to issue directions.

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions.—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market.”

Amendment of section 12.

7. In section 12 of the principal Act,—

(a) in sub-section (1),—

(i) for the word “rules”, the word “regulations” shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.”;

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) No depository, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.

(1B) No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment scheme operating in the Securities market immediately before the commencement of the Securities Laws (Amendment) Act 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.”.

8. In section 14 of the principal Act, in sub-section (1),—

(i) in clause (a), the word “and” occurring at the end shall be omitted;

(ii) after clause (a), the following clause shall be inserted namely:—

“(aa) all sums realised by way of penalties under this Act: and”.

9. After Chapter VI of the principal Act, the following Chapters shall be inserted, namely:—

Insertion of new Chapters VIA and VIB.

“CHAPTER VIA

PENALTIES AND ADJUDICATION

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

Penalty for failure to furnish information, return, etc.

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

15B. If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty not exceeding five lakh rupees for every such failure.

Penalty for failure by any person to enter into agreement with clients.

15C. If any person, who is registered as an intermediary, after having been called upon by the Board in writing to redress the grievances of investors, fails to redress such grievances, he shall be liable to a penalty not exceeding ten thousand rupees for each such failure.

Penalty for failure to redress investors' grievances.

15D. If any person, who is—

(a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty not exceeding ten thousand rupees for each day during which he carries on any such collective investment scheme, including mutual funds, or ten lakh rupees, whichever is higher;

Penalty for certain defaults in case of mutual funds.

(b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher;

(c) registered with the Board as a collective investment scheme including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is higher;

(d) registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty not exceeding one thousand rupees for each day during which such failure continues;

(f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

15E. Where any asset management company of a mutual fund registered under this Act fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to a penalty not exceeding five lakh rupees for each such failure.

Penalty
for
failure
to ob-
serve
rules
and
regula-
tions
by an
asset
manage-
ment
com-
pany.

Penalty
for
default
in case
of stock
brokers.

15F. If any person, who is registered as a stock broker under this Act,—

(a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker;

(b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the

period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

15G. If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

Penalty
for
insider
trading.

shall be liable to a penalty not exceeding five lakh rupees.

15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to—

(i) disclose the aggregate of his share holding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price,

he shall be liable to a penalty not exceeding five lakh rupees.

Penalty
for
non-dis-
closure
of
acqui-
sition
of
shares
and
take-
overs.

15I. (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G and 15H, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Power to
adjudi-
cate.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Factors to be taken into account by the adjudicating officer.

15J. While adjudging the quantum of penalty under section 15-J, the adjudicating officer shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

CHAPTER VI B

ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF APPELLATE TRIBUNAL

Establishment of Securities Appellate Tribunals.

15K. (1) The Central Government shall by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction,

Composition of Securities Appellate Tribunal.

15L. A Securities Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Securities Appellate Tribunal) to be appointed, by notification, by the Central Government.

Qualifications for appointment as Presiding Officer of the Securities Appellate Tribunal.

15M. A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has held office as the Presiding Officer of a Tribunal for at least three years.

Terms of office.

15N. The Presiding Officer of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

15O. The salary and allowances payable to and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the Presiding Officer of a Securities Appellate Tribunal shall be such as may be prescribed:

Salary and allowances and other terms and conditions of service of Presiding Officers.

Provided that neither the salary and allowances nor the other terms and conditions of service of the said presiding Officers shall be varied to their disadvantage after appointment.

15P. If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Securities Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

Filling up of vacancies.

15Q. (1) The Presiding Officer of a Securities Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation and removal.

Provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer of a Securities Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court, in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the aforesaid Presiding Officer.

15R. No order of the Central Government appointing any person as the Presiding Officer of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceeding.

15S. (1) The Central Government shall provide the Securities Appellate Tribunal with such officers and employees as that Government may think fit.

Staff of the Securities Appellate Tribunal.

(2) The officers and employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Securities Appellate Tribunal shall be such as may be prescribed.

Appeal
to the
Securities
Appellate
Tribunal.

15T. (1) Save as provided in sub-section (2), any person aggrieved by an order made by an adjudicating officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

(6) ~~The appeal filed~~ before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure
and
powers
of the
Securi-
ties Ap-
pellate
Tribunal.

15U. (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

5 of 1908.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) any other matter which may be prescribed.

45 of 1860.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

15V. The appellant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

36 of 1963.

15W. The provisions of the Limitation Act, 1963, shall as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

45 of 1860.

15X. The Presiding Officer and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Right to
legal
repre-
sentation.

Limitation.

Presiding
officer
and
staff of
Securities
Appel-
late
Tribunal
to be
public
servants.

15Y. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil
Court
not to
have
jurisdic-
tion.

15Z. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Appeal
to High
Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

Amend-
ment of
section
18.

Insertion
of new
section
20A.

Bar of
jurisdic-
tion.

10. In section 18 of the principal Act, in sub-section (2), for the words "sixty days", the words "ninety days" shall be substituted.

11. After section 20 of the principal Act, the following section shall be inserted, namely:—

"20A. No order passed by the Board under this Act shall be appealable except as provided in section 20 and no civil court shall have jurisdiction in respect of any matter which the Board is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board by, or under this Act."

Amend-
ment of
section
23.

Substi-
tution
of new
section
for
section
24.

12. In section 23 of the principal Act, after the words "against the Central Government", the words "or Board" shall be inserted.

13. For section 24 of the principal Act, the following section shall be substituted, namely:—

"24. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both."

Offences.

Amend-
ment of
section
26.

Omis-
sion of
section
28.

14. In section 26 of the principal Act, in sub-section (1), the words "with the previous sanction of the Central Government" shall be omitted.

15. Section 28 of the principal Act shall be omitted.

Amend-
ment of
section
29.

16. In section 29 of the principal Act, in sub-section (2),—

(i) clause (c) shall be omitted;

(ii) after clause (d), the following clauses shall be inserted, namely:—

"(da) the manner of inquiry under sub-section (1) of section 15-I;

(db) the salaries and allowances and other terms and conditions of service of the Presiding Officers and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;

(dc) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers of the Securities Appellate Tribunals under sub-section (3) of section 15Q;

(dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal."

17. In section 30 of the principal Act ---

(a) in sub-section (1), the words "with the previous approval of the Central Government", shall be omitted;

Amend-
ment of
section
30.

(b) in sub-section (2), for clause (c), the following clauses shall be substituted, namely:—

(c) the matter relating to issue of capital, transfer of, securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;

(d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12."

CHAPTER III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

42 of 1956.

18. In the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act), in the preamble, the words "by prohibiting options and" shall be omitted.

Amend-
ment of
preamble.

19. In section 8 of the principal Act, in sub-section (1), for the words "six months", the words "two months" shall be substituted.

Amend-
ment of
section
8.

20. In section 10 of the principal Act, in sub-section (3), for the words "six months", the words "two months" shall be substituted.

Amend-
ment of
section
10.

21. After section 13 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
13A.
Addi-
tional
trading
floor.

"13A. A stock exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board.

Explanation.—For the purposes of this section, "additional trading floor" means a trading ring or trading facility offered by a recognised stock exchange outside its area of operation to enable the investors to

buy and sell securities through such trading floor under the regulatory framework of that stock exchange.’

Omission
of sec-
tion 20.

22. Section 20 of the principal Act shall be omitted.

Substi-
tution of
new sec-
tion for
section
21.

23. For section 21 of the principal Act, the following section shall be substituted, namely:—

Condi-
tions for
listing

“21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”.

Amend-
ment of
section
23.

24. In section 23 of the principal Act,—

(a) in sub-section (1), clause (d) shall be omitted;

(b) in sub-section (2), for the words and figures “or who fails to comply with the orders of the Securities and Exchange Board of India under section 21”, the words and figures “or who fails to comply with the provisions of section 21 or with the orders of” shall be substituted.

Amend-
ment of
section
30.

25. In section 30 of the principal Act, in sub-section (3), the words “shall be subject to the condition of previous publication and shall be omitted.

CHAPTER IV

REPEAL AND SAVING

Repeal
and
saving.

26. (1) The Securities Laws (Amendment) Ordinance, 1955, is hereby repealed.

Ord. 5 of
1995.

(2) Notwithstanding such repeal, anything done or any action taken under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts Regulation Act, 1956, as amended by the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

15 of 1992.
42 of 1956.

STATEMENT OF OBJECTS AND REASONS

The Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956 govern the operation of the capital market. **The object of the Securities and Exchange Board of India Act, 1992 is to provide for the establishment of the Securities and Exchange Board of India (hereafter referred to as the Board) to protect the interests of investors in investors in securities and to promote the development of, and to regulate, the securities market and matters connected therewith.**

2. On the basis of past experience of the Board, a need has been felt to amend the said Acts in respect of certain categories of intermediaries, persons associated with the securities market and companies on matters relating to the issue of capital and the transfer of securities.

3. In order to enable the Board to function more effectively, it has become essential to amend the aforesaid Acts to provide *inter alia*, for the following:—

(a) regulate the companies on matters relating to issue of capital, transfer of securities and other matters incidental thereto;

(b) bring intermediaries like depositories, custodians for securities and some other categories of persons associated with the securities market like foreign institutional investors, credit rating agencies and venture capital funds which play a major role in the development of the capital market which were outside the purview of the Board;

(c) impose monetary penalties also in addition to or other than penalties of suspension or cancellation of certificate of registration which may not be appropriate in all cases of default;

(d) provide for appointment of adjudicating officer for imposition of penalties and for establishment of Securities Appellate Tribunal to hear appeals from the orders or decisions of adjudicating officer;

(e) issue regulations without the approval of the Central Government;

(f) allow directors of companies to be appointed as members of the Board so that the Board benefits from the expertise of people familiar with the capital market;

(g) facilitate the issuance and trading of options in securities;

(h) allow the existing stock exchanges to establish additional trading floors outside their area of operation;

(i) make violation of the listing agreement as an offence.

4. As Parliament was not in session, President promulgated the Securities laws (Amendment) Ordinance, 1995 on the 25th January, 1995 for the said purpose.

5. The Bill seeks to replace the said Ordinance.

MANMOHAN SINGH

FINANCIAL MEMORANDUM

Clause 9 of the Securities Laws (Amendment) Bill, 1995 inter alia, provides for insertion of new sections 15K, 15-O and 15S in the Securities and Exchange Board of India Act, 1992. The proposed section 15K provides for establishment of Appellate Tribunals to be known as Securities Appellate Tribunal to be presided over by a Presiding Officer to be appointed by the Central Government. Section 15-O provides for salaries and allowances and other conditions of service of the said Presiding Officers. Section 15S provides for appointment of other officers and employees of the Appellate Tribunals and their salaries and allowances and other terms and conditions. For setting up of the tribunals, a non-recurring expenditure of Rs. 5 lakhs and recurring annual expenditure of Rs. 5 lakhs approximately, shall involve from the Consolidated Fund of India. Except the aforesaid expenditure there would be no other recurring or non-recurring expenditure from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to amend section 29 of the Securities and Exchange Board of India Act, 1992 to empower the Central Government to make rules for the manner of enquiry by the adjudicating officer under section 15-I, salaries and allowances and other terms and conditions of service of presiding officers and other officers of the Securities Appellate Tribunal, the procedure for investigation of misbehaviour or incapacity of presiding officer of the Securities Appellate Tribunal and the form in which an appeal may be filed before the Securities Appellate Tribunal.

2. Clause 17 seeks to amend section 30 of the said Act to empower the Securities and Exchange Board of India to make regulations for the matters relating to issue of capital transfer of securities and other matters incidental thereto and the manner in which such matters shall be disposed by the companies and the condition subject to which registration certificate is to be issued, the fee to be paid for such registration and manner of suspension or cancellation of such registration certificate issued under the Act.

3. The matters in respect of which rules and regulation may be made are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

4. The delegation of legislative power is therefore, of a normal character.

Memorandum regarding modifications contained in the Bill to replace the Securities Laws (Amendment) Ordinance, 1995.

It is proposed to modify section 11B as inserted by clause 6 so as to empower the Board to issue directions to any person associated with the securities market and also to companies in respect of matters referred to in section 11A.

2. It is proposed to insert a new clause 11 so as to insert a new section 20A to provide that no order passed by the Board under the Act shall be appealable except as provided in section 20 thereof and no Civil Court shall have jurisdiction in respect of any matter which the Board is empowered by or under the Act to pass any order.

3. It is also proposed to modify clause 17 which seeks to amend section 30 so as to dispense with the previous approval of the Central Government for making of the regulations by the Board.

4. It is also proposed to make certain other modifications of consequential or drafting nature.

III

BILL NO. I OF 1995

A bill to empower the Central Government to direct the transfer of the land, or of the rights in or over land or of the right, title and interest in relation to a coal mine, coking coal mine or coke oven plant, vested in the Coal India Limited or in a subsidiary company to any subsidiary company of Coal India Limited or any other subsidiary company and to validate certain transfers of such land or rights.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Coal India (Regulation of Transfers and Validation) Act, 1995.

Short
title.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) "Coal India" means the Coal India Limited, a Government company incorporated under the Companies Act, 1956 having its registered office at Calcutta and includes its predecessor Government company, namely, the Coal Mines Authority Limited;

(b) "subsidiary company" means the following subsidiary companies of Coal India, namely :—

(i) the Central Coal Fields Limited, Ranchi and includes its predecessor Government company, namely, the National Coal Development Corporation Limited, Ranchi;

- (ii) the Bharat Coking Coal Limited, Dhanbad;
- (iii) the Western Coal Fields Limited, Nagpur;
- (iv) the Eastern Coal Fields Limited, Sanctoria;
- (v) the Central Mine Planning and Design Institute Limited, Ranchi;
- (vi) the South-Eastern Coal Fields Limited, Bilaspur;
- (vii) the Northern Coal Fields Limited, Singrauli;
- (viii) the Mahanadi Coal Fields Limited, Sambalpur,

and includes such other subsidiary company of Coal India as may be incorporated under the Companies Act, 1956 from time to time;

1 of 1956

(c) words and expressions used herein and not defined but defined in the Coking Coal Mines (Nationalisation) Act, 1972 or the Coal Mines (Nationalisation) Act, 1973, shall have the meanings, respectively, assigned to them in those Acts.

36 of 1972.
26 of 1973.

Power of
Central
Govern-
ment to
direct
transfer
of land,
rights,
title or
interest.

3. (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government may, if it is satisfied that a subsidiary company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification in the Official Gazette, that the land or rights in or over such land or the right, title and interest in relation to a coal mine, coking coal mine or a coke oven plant vested in the Coal India shall, instead of continuing to vest in the Coal India, vest in that subsidiary company or, where such land or right, title or interest vests in a subsidiary company, in another subsidiary company.

(2) Where the land or rights in or over such land or the right, title and interest in relation to a coal mine, coking coal mine or a coke oven plant vest in a subsidiary company under sub-section (1) such subsidiary company shall, on and from the date of such vesting, be deemed to have become the lessee in relation to such coal mine or cooking coal mine, had been granted to it under the Mineral Concession Rules, 1960 made under section 13 of the Mines and Minerals (Regulation and Development) Act, 1957 for the maximum period for which such lease could have been granted under those rules, and all the rights and liabilities of Coal India or, as the case may be, the subsidiary company in relation to such coal mine or coking coal mine shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of subsidiary company first-mentioned.

67 of 1957.

Valida-
tion of
certain
transfers.

4. A subsidiary company which was operating, or was in control of, any coal mine, coking coal mine or coke oven plant which was vested in the Coal India or any other subsidiary company immediately before the commencement of this Act, shall be deemed to have been vested with the land or rights in or over such land or the right, title and interest in relation to such coal mine, coking coal mine or coke oven plant and such vesting shall be deemed to have been valid and effective at all material times as if a direction had been made by the Central Government under sub-section (1) of section 3 and accordingly no suit or other proceeding shall be instituted, maintained or continued in any court on the ground that such subsidiary company was not competent to operate or control such coal mine, coking coal mine or coke oven plant.

STATEMENT OF OBJECTS AND REASONS

The coal industry was nationalised in two phases, that is, in 1972 and 1973. After nationalisation, the coking and non-coking coal mines in the Jharia Coal Fields in Bihar and a few mines in Barakar and Mugma regions were directed to be vested in the Bharat Coking Coal Limited, Dhanbad. Most of the other coal mines in the States of Assam, Bihar, West Bengal, Orissa, Madhya Pradesh and Maharashtra were directed to be vested in the Coal Mines Authority Limited. Subsequently, a holding company, namely, the Coal India Limited was set up with effect from the 1st November, 1975, initially with five subsidiaries. Later three more subsidiaries were created by delinking certain collieries from other subsidiaries.

2. Ever since the nationalisation of the coal industry, though the land or rights in or over such land acquired under various Acts and the right, title and interest in relation to a coal mine or a coke oven plant were directed to be vested in the Coal India Limited or its predecessor in title, its subsidiary companies were *de facto* managing such land, coal mines or plants.

3. The absence of a formal legal title to the land or rights in or over such land or the right, title and interest in relation to a coal mine or coke oven plant, in the subsidiary companies has exposed them to litigation and other legal infirmities. While the Companies Act, 1956 contains provisions for reconstruction and amalgamations, such reconstruction or amalgamation could be given effect to prospectively only under that Act.

4. It has, therefore, been considered necessary to empower the Central Government to direct the transfer of land or the rights in or over such land or the right, title or interest in relation to a coal mine or coke oven plant vested in the Coal India Limited to a subsidiary company, or where such land or mine are vested in a subsidiary company, to another subsidiary company. It has also been considered necessary to validate all purported transfers of the land or rights in or over such land or the right, title and interest in relation to a coal mine or coke oven plant from the Coal India Limited to a subsidiary company and from one subsidiary company to another subsidiary company before the commencement of the proposed legislation.

5. The Bill seeks to achieve the above objects.

AJIT KUMAR PANJA

V. S. RAMA DEVI,
Secretary-General.

Published by the Secretary-General, Rajya Sabha under rule 68 of the Rules of Procedure and Conduct of Business in the Rajya Sabha.

